

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0543

IN THE MATTER OF

JAMES G. AND AMELIA M. SWEENEY
SWEENEY DAIRY
TULARE COUNTY

This Complaint is issued to James G. and Amelia M. Sweeney (Discharger) pursuant to California Water Code (Water Code) section 13268, which authorizes the imposition of Administrative Civil Liability (ACL), Water Code section 13323, which authorizes the Assistant Executive Officer to issue this Complaint. This Complaint is based on findings that indicate that the Discharger failed to submit technical reports pursuant to an Order issued by the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) under the authority of Water Code section 13267.

The Assistant Executive Officer of the Central Valley Water Board finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the Sweeney Dairy (Dairy), located at 30712 Road 170, Visalia, California, County of Tulare.
2. The Dairy is regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order), which was adopted by the Central Valley Water Board on 3 October 2013. (Exhibit A.) The Reissued General Order replaces the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and accompanying Monitoring and Reporting Program (MRP). The Reissued General Order and accompanying MRP contain reporting requirements for dairies regulated by the Reissued General Order.
3. The Reissued General Order and accompanying MRP require the submission of an Annual Report for the 2012 calendar year for regulated facilities by 1 July 2013 (2012 Annual Report), including an Annual Dairy Facility Assessment with facility modifications implemented to date.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

4. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
5. Pursuant to Water Code section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharged or

discharging, or who proposes to discharge waste within its region... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

6. Pursuant to Water Code section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
7. Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

ALLEGED VIOLATION

8. On 22 August 2013, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the 2012 Annual Report with appurtenant components had not been received. (Exhibit B.) The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.
9. On 26 August 2013, the Central Valley Water Board received a letter from the Discharger, which asserted that the reporting requirements of the 2007 General Order were no longer applicable because the Order had been declared illegal by the Third District Court of Appeals (Court). On 25 September 2013, the Central Valley Water Board staff responded that the Court's decision did not affect the reporting requirements of the 2007 General Order, nor did it stay enforcement thereof. (Exhibit C.) The Reissued General Order was adopted by the Central Valley Water Board in response to the Court's decision.
10. On 8 July 2014, the Central Valley Water Board staff issued a courtesy pre-filing settlement letter notifying the Discharger that staff was in the process of assessing civil liability for failure to submit the 2012 Annual Report. (Exhibit D.) The letter included a calculation of the maximum penalty (\$353,000) and a recommended penalty amount (\$18,564) as of 19 June 2014 for the failure to submit the missing report. The Discharger was provided an opportunity to meet with the Central Valley Water Board staff to discuss the alleged violation and submit any information regarding the factors listed in Water Code section 13327 that would be deemed relevant to determining an appropriate monetary penalty. The letter requested that all responses be received by 11 July 2014. The letter also indicated that if staff did not receive a response from the Discharger by 11 July 2014, the Assistant Executive Officer would issue a Complaint to the Discharger. As of the date

of issuance of this Complaint, the Central Valley Water Board staff has not received any response to the 8 July 2014 pre-filing settlement letter.

11. Central Valley Water Board's compliance tracking system and case files indicate that to date the Board has not received the 2012 Annual Report or any of the appurtenant components thereof.
12. The Discharger is alleged to have violated the following sections of the Reissued General Order and of the MRP:

A) Provision G.3 of the Reissued General Order, which states:

"The Discharger shall comply with the attached Monitoring and Reporting Program R5-2013-0122 which is part of this Order, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or the Executive Officer."

B) Provision G.13 of the Reissued General Order, which states in part:

"The Discharger must comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer."

C) The MRP, which states in part:

"An annual monitoring report is due by 1 July of each year [T]he annual report shall cover information on crops harvested during the previous calendar year"

13. The Discharger violated both the Reissued General Order and the MRP by failing to submit the 2012 Annual Report with appurtenant components as directed by the MRP that accompanies the Reissued General Order, which contain reporting requirements for dairies regulated by the Reissued General Order.

SUMMARY OF ALLEGED VIOLATIONS

1. **Violation No. 1:** The Discharger failed to submit an annual report for 2012 with appurtenant components by 1 July 2013 as required by the Reissued General Order and the MRP. As of the date of this Complaint this report is now 378 days late. A pre-filing settlement letter issued to the Discharger on 8 July 2014 establishes a total of 353 days in which the Discharger has been out of compliance for failure to submit the 2012 Annual Report, and is the basis for determining the recommended civil liability amount.

The Discharger has been out of compliance for a total of 353 days.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

14. On 17 November 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf.

15. The administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy. In summary, this penalty assessment is based on a consideration of the failure to respond to requests made pursuant to Water Code section 13267, subdivision (b), for Violation 1. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

Violations under Water Code section 13267 are assessed on a per day basis. However, the violations at issue are primarily reporting violations and therefore qualify for the alternative approach to penalty calculation under the Enforcement Policy. The failure to submit an annual report does not cause daily detrimental impacts to the environment or the regulatory program. It is appropriate to assess daily penalties for the first thirty (30) days, plus one violation for each additional thirty-day period. For Violation 1, the days fined is reduced to 17 days (Attachment B).

The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A and shown in the Penalty Calculation for Civil Liability (Attachment B).

16. The maximum penalty for the violation described above is \$353,000 based on a calculation of the total number of per-day violations times the statutory maximum penalty (353 total days of violation X \$1,000). However, based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **eighteen thousand five hundred and sixty-four dollars (\$18,564)** for the violation cited above. The specific factors considered in this penalty are detailed in Attachment A. The Discharger's culpability, history of violations, and ability to pay and continue in business were considered. Other factors as justice may require were considered, but circumstances warranting an adjustment under this step were not identified by staff or provided by the Discharger.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The Executive Officer proposes that the Discharger be assessed an administrative civil liability pursuant to Water Code sections 13323 and 13268 in the amount of **eighteen thousand five hundred and sixty-four dollars (\$18,564)** for failure to submit the 2012 Annual Report with appurtenant components by the 1 July 2013 deadline as required by the Reissued General Order and the MRP.

If the Central Valley Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.

There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.

Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Payment of the assessed liability amount does not absolve the Discharger from complying with the Reissued General Order or the MRP, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the Reissued General Order, the MRP, and/or future orders issued by the Central Valley Water Board.

7/17/14
Date

Clay L. Rodgers
Clay L. Rodgers
Assistant Executive Officer
Central Valley Water Board Prosecution Team

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent James G. and Amelia M. Sweeney (Discharger) in connection with Administrative Civil Liability Complaint R5-2014-0543 (Complaint);
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. ☐ **(Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of eighteen thousand five hundred and sixty-four dollars (\$18,564) subject to adjustment for timely submission of the required reports)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

I certify that the Discharger will be liable for **eighteen thousand five hundred and sixty-four dollars (\$18,564)** in full.

In addition to the reports, the Discharger shall also remit payment of the adjusted liability amount, by check, which will contain a reference to "ACL Complaint R5-2014-0543" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board by **11 August 2014** or this matter will be placed on the Central Valley Water Board's agenda for consideration of adoption at the **9/10 October 2014** Central Valley Water Board meeting. Payment must be received at the following address: State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check must also be received by the Central Valley Water Board.

I understand that payment of the **\$18,564** in full is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

4. ☐ **(Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
5. ☐ **(Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery

of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

EXHIBIT A

Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies
Order R5-2013-0122

can be viewed at:

[http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/
r5-2013-0122.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0122.pdf)

EXHIBIT B

Notice of Violation Issued 22 August 2013
For Failure to Submit 2012 Annual Report



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

FILE

22 August 2013

NOTICE OF VIOLATION

James G. & Amelia M. Sweeney (owner/operator)
Sweeney Dairy
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
7012 2920 0000 1430 2278

POTENTIAL ADMINISTRATIVE CIVIL LIABILITY FOR FAILURE TO SUBMIT THE 2012 ANNUAL REPORT, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, TULARE COUNTY

The dairy facility identified above is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2007-0035 (General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 May 2007. The General Order required that a 2012 Annual Report (Annual Report) be submitted for regulated facilities by 1 July 2013, including an Annual Dairy Facility Assessment. To date, the required Annual Report has not been received.

The report is required pursuant to California Water Code (CWC) section 13267. CWC section 13268 provides that failure to submit the required reports can subject you to administrative civil liability (monetary penalties) at a rate of up to \$1,000 for each day each report is late or substantially incomplete if imposed by the Central Valley Water Board, or at a rate of up to \$5,000 for each day a report is late or substantially incomplete if imposed by the superior court. It is important that you promptly provide the Central Valley Water Board with the Annual Report required by the General Order that was due by 1 July 2013, to minimize your potential liability.

Please note that an annual report is required for the subject facility as long as it is regulated under the General Order, even if the facility was vacant during the 2012 calendar year. If the facility was vacant during 2012, no manure or wastewater was exported during 2012, and no manure or wastewater was land applied during 2012, you must submit a report containing this information and providing groundwater data for any domestic or agricultural wells on site.

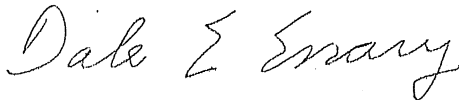


KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCCE, EXECUTIVE OFFICER

1685 E. Street, Fresno, CA 93706 | www.waterboards.ca.gov/centralvalley

If the dairy is currently in the closure process, but it operated as a dairy during part of the 2012 calendar year, you must submit a report which provides data on manure and crop production and land application or export of manure or wastewater, as well as groundwater data for any domestic or agricultural wells on site.

Please contact Lorin Sutton at (559) 445-6086 if you have any questions regarding this matter.

A handwritten signature in cursive script that reads "Dale E. Essary".

DALE E. ESSARY
Senior Engineer
Confined Animals Unit

EXHIBIT C

Response to Discharger's 26 August 2013 Correspondence



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

FILE

25 September 2013

James G. & Amelia M. Sweeney (owner/operator)
Sweeney Dairy
30712 Road 170
Visalia, CA 93292

**RESPONSE TO NOTICE OF VIOLATION FOR FAILURE TO SUBMIT 2012 ANNUAL
REPORT, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, TULARE COUNTY**

We are writing in response to your correspondence, dated 26 August 2013, regarding the legal status of Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2007-0035 (Dairy General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 May 2007.

In your correspondence, you stated:

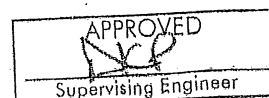
"This is in response to your Notice of Violation dated August 22, 2013. You charge us with violating Order No. R5-2007-0035. Interestingly, on November 6, 2012, the Third District Court of Appeals found the Order to be illegal. On April 16, 2013, the trial court in the Sacramento Superior Court issued a Writ of Mandate, ordering the Regional Board to set aside said Order No. R5-2007-0035.

Despite the above, you allege that we have violated an Order that has been declared by an appellate court to be illegal, and was subsequently ordered by the trial court to be set aside. Your disregard for the legal process is astonishing, and it far surpasses anything you have ever accused us of doing or failing to do. We intend now to examine our remedies and will let you know in due course."

As you note, the Dairy General Order was addressed by the Third District Court of Appeal in *Asociación de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255 (AGUA), and subsequently by a Writ of Mandate (Writ) issued by the Sacramento County Superior Court. In accordance with AGUA and the Writ, the Central Valley Water Board proposed tentative general waste discharge requirements that will rescind and replace the Dairy General Order. These proposed revisions are available on the Central Valley Water Board's website.

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

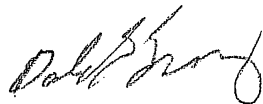
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However, the Dairy General Order remains valid and legally enforceable in regards to the requirement to submit an Annual Report on July 1st of each year. The *AGUA* decision and the Writ did not modify the reporting requirements of the Dairy General Order, and did not stay enforcement of these provisions.

As summarized in the Notice of Violation, dated August 22, 2013, the Dairy General Order required that a 2012 Annual Report be submitted for regulated facilities, which includes the dairy at 30712 Road 170, Tulare County, CA, by 1 July 2013. To date, the required Annual Report has not been received. The report is required pursuant to California Water Code (CWC) section 13267. Pursuant to CWC 13268, failure to submit the required reports can subject you to administrative civil liability (monetary penalties) at a rate of up to \$1,000 for each day each report is late or substantially incomplete if imposed by the Central Valley Water Board, or at a rate of up to \$5,000 for each day a report is late or substantially incomplete if imposed by the superior court. It is important that you promptly provide the Central Valley Water Board with the Annual Report required by the General Order that was due by 1 July 2013, to minimize your potential liability.

Please contact me at (559) 445-5093 if you have any questions regarding this matter.



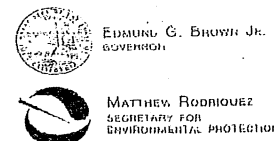
DALE E. ESSARY
Senior Engineer
Confined Animals Unit

EXHIBIT D

Letter Issued 8 July 2014

Forthcoming Assessment of Civil Liability for Failure to Submit 2012 Annual Report

DKF



Central Valley Regional Water Quality Control Board

8 July 2014

James G. & Amelia M. Sweeney (owner/operator)
Sweeney Dairy
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
7013 2250 0002 0464 4079

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO SUBMIT THE ANNUAL REPORT FOR 2012, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The Central Valley Regional Water Board (Central Valley Water Board) has requested that the State Water Resources Control Board, Office of Enforcement, assist it in bringing formal enforcement in administrative civil liability for failing to submit the annual report for 2012 required pursuant to Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and later replaced by Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order). The Central Valley Water Board intends to proceed with formal enforcement by issuing an Administrative Civil Liability Complaint (Complaint); however, prior to prosecuting this case, we offer the opportunity to discuss the alleged violation, including the option of settlement.

The Reissued General Order and the accompanying Monitoring and Reporting Program (MRP) required, pursuant to section 13267 of the California Water Code, that an Annual Report for the calendar year 2012 (2012 Annual Report) be submitted for regulated facilities by 1 July 2013. On 22 August 2013, Central Valley Water Board staff issued a Notice of Violation notifying you that the 2012 Annual Report had not been received for your dairy facility. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to avoid incurring any additional liability. To date, the Central Valley Water Board has not received the 2012 Annual Report.

Failing to submit the annual report subjects you to civil penalties pursuant to section 13268 of the Water Code of up to one thousand dollars (\$1,000) for each day the violation occurs.

Further delay in submitting the annual report subjects you to ongoing penalties. The maximum penalty as of 19 June 2014 for this violation is three hundred fifty-three thousand dollars (\$353,000), based on a calculation of the cumulative total number of per-day violations times the statutory maximum penalty (353 total days of violation X \$1,000). Consistent with the State Water Resources Control Board's Water Quality Enforcement Policy, the Assistant Executive Officer of the

KARL E. LONGLEY SCD, P.E., CHAIR | PAMELA C. CREEDON P.E., BGEE, EXECUTIVE OFFICER

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8 July 2014

Central Valley Water Board intends to issue you a Complaint in the amount of eighteen thousand five hundred sixty-four dollars (\$18,564) for this violation. This recommended penalty amount is further explained in Attachment A. Please note, as long as you remain out of compliance, the Assistant Executive Officer reserves its authority to issue a Complaint in an amount that exceeds the penalty calculated in Attachment A.

By way of this letter, you are being notified of the opportunity to meet with Central Valley Water Board staff prior to the issuance of the Complaint to discuss the alleged violation and proposed penalty amount. If you wish to schedule an appointment to discuss this matter, contact Dale Essary at (559) 445-5093 no later than **11 July 2014**. If the Central Valley Water Board does not receive a response by this date, the Assistant Executive Officer will issue a complaint and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board.

If you have any questions regarding this notice, please contact Dale Essary by phone at (559) 445-5093 or by email at Dale.Essary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising WRC Engineer

cc: Mr. Andrew Altevogt, Central Valley Water Board, Rancho Cordova
Mr. Clay Rodgers, Central Valley Water Board, Fresno
Ms. Naomi Kaplowitz, Office of Enforcement, SWRCB, Sacramento
Mr. David Boyers, Office of Enforcement, SWRCB, Sacramento
Tulare County Health & Human Services Agency, Environmental Health, Visalia
Tulare County Resource Management Agency, Code Compliance, Visalia

Attachment A – Pre-Complaint Letter
Specific Factors Considered – Civil Liability
James G. & Amelia M. Sweeney
Sweeney Dairy

The Central Valley Water Board alleges that the Discharger failed to submit the 2012 Annual Report required to be submitted by 1 July 2013. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violation is a non-discharge violation. Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

1. **Violation No. 1 (Failure to submit 2012 Annual Report):** In accordance with the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order) and the accompanying Monitoring and Reporting Program (MRP), a 2012 Annual Report must be submitted for regulated facilities by 1 July 2013. To date, the Owner and/or Operator (hereinafter the Discharger) has not submitted this report for the Sweeney Dairy.

Calculation of Penalty for Failure to Submit 2012 Annual Report

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.35.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to submit the 2012 Annual Report did not increase the amount of pollution discharged or threatened to discharge into waters of the State. The submission of an Annual Report is a means through which the Central Valley Water Board can evaluate a Discharger's compliance with the Reissued General Order. Failing to timely submit the Annual Report to the Central Valley Water Board hinders the Board's ability to follow-up with noncompliance and such circumstances present at least a minor potential for harm. The deviation from requirements was determined to be major, as the requirement to submit the Annual Report has been rendered ineffective. The failure to submit the required technical report undermines the Central Valley Water Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the Reissued General Order.

**Attachment A – Pre-Complaint Letter
Sweeney Dairy**

Initial Liability

The failure to submit annual reports is an enforceable violation under Water Code section 13268(b)(1) by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit a 2012 Annual Report by 1 July 2013 as required by the Reissued General Order and the MRP, which is now 353 days late.

However, the alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit required technical reports does not result in an economic benefit that can be measured on a daily basis. The Discharger only receives an economic benefit by not submitting the required technical report, and not a per-day benefit during the entire period of violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 17 days of violation. A calculation of initial liability totals \$5,950 (0.35 per day factor X 17 adjusted days of violation X \$1,000 per day penalty).

Step 4. Adjustment Factors

a) Culpability: 1.2

Discussion: The Discharger was assessed a score of 1.2, which increases the liability amount. The Discharger is responsible for failing to submit the annual report alleged herein. The requirement to submit a 2012 Annual Report was detailed in the Reissued General Order. Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the Reissued General Order, the Discharger continues to fail to comply. Thus, the Discharger had knowledge of the requirement to submit the Annual Report and failed to meet the reasonable standard of care in that regard.

b) Cleanup and Cooperation: 1.3

Discussion: The Discharger was assessed a score of 1.3, which increases the liability amount. The Discharger was issued a Notice of Violation on 22 August 2013, which requested that the report be submitted as soon as possible to minimize liability. The Discharger was unresponsive to the NOV, and did not cooperate with the Water Board to come back into compliance. The violation of Water Code section 13268(a), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

**Attachment A – Pre-Complaint Letter
Sweeney Dairy**

c) *History of Violations: 2*

Discussion: The Discharger was assessed the score of 2, which increases the fine. The Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2011-0068 on 13 October 2011 for the Discharger's failure to submit the 2009 Annual Report and the Waste Management Plan by the required deadlines, as required by the Reissued General Order and the MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2012-0070 on 2 August 2012 for the Discharger's failure to submit the 2010 Annual Report by the required deadline, as required by the Reissued General Order and the MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2013-0091 on 25 July 2013 for the Discharger's failure to submit the 2011 Annual Report by the required deadline, as required by the Reissued General Order and the MRP. The Enforcement Policy requires that a minimum multiplier of 1.1 be used when there is a history of repeat violations.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

- a) *Total Base Liability Amount: \$18,564* [Initial Liability (\$5,950) x Adjustments (1.2)(1.3)(2)].

Step 6. Ability to Pay and Continue in Business

The Enforcement Policy provides that if the Central Valley Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

- a) *Adjusted Total Base Liability Amount: \$18,564*

Discussion: The Discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the Dairy, a significant asset, and 2) the Discharger operates a dairy, an ongoing business that generates profits.

Without additional information provided by the Discharger, based on this initial assessment of information available in the public record, it appears the Discharger has the assets to pay the Total Base Liability. Based on the reasons discussed above, no reduction in liability is warranted.

**Attachment A – Pre-Complaint Letter
Sweeney Dairy**

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount:* \$18,564 + \$0 (Staff Costs) = **\$18,564.**
- b) *Discussion:* No staff costs have been assessed as part of this enforcement action.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit:* **\$1,500**

Discussion: The Discharger has received an economic benefit from the costs saved in not drafting and preparing the 2012 Annual Report. This is based on the current consulting costs of producing an Annual Report (\$1,500). The adjusted combined total base liability amount of \$18,564 is more than at least 10% higher than the economic benefit amount (\$1,500) as required by the Enforcement Policy.

Step 9. Maximum and Minimum Liability Amounts

- a) *Minimum Liability Amount:* **\$1,650**

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the alleged violation is \$1,500.

- b) *Maximum Liability Amount:* **\$353,000**

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13367(b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (353 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2012 Annual Report is **\$18,564.**

Attachment A – ACL Complaint No. R5-2014-0543
Specific Factors Considered – Civil Liability
James G. & Amelia M. Sweeney
Sweeney Dairy

The Central Valley Water Board alleges that the Discharger failed to submit the 2012 Annual Report required to be submitted by 1 July 2013. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violation is a non-discharge violation. Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

- 1. Violation No. 1 (Failure to submit 2012 Annual Report):** In accordance with the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order) and the accompanying Monitoring and Reporting Program (MRP), a 2012 Annual Report must be submitted for regulated facilities by 1 July 2013. To date, the Owner and/or Operator (hereinafter the Discharger) has not submitted this report for the Sweeney Dairy.

Calculation of Penalty for Failure to Submit 2012 Annual Report

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.35.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to submit the 2012 Annual Report did not increase the amount of pollution discharged or threatened to discharge into waters of the State. The submission of an Annual Report is a means through which the Central Valley Water Board can evaluate a Discharger's compliance with the Reissued General Order. Failing to timely submit the Annual Report to the Central Valley Water Board hinders the Board's ability to follow-up with noncompliance and such circumstances present at least a minor potential for harm. The deviation from requirements was determined to be major, as the requirement to submit the Annual Report has been rendered ineffective. The failure to submit the required technical report undermines the Central Valley Water Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the Reissued General Order.

Initial Liability

The failure to submit annual reports is an enforceable violation under Water Code section 13268(b)(1) by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit a 2012 Annual Report by 1 July 2013 as required by the Reissued General Order and the MRP, which is now 378 days late. A pre-filing settlement letter issued to the Discharger on 8 July 2014 establishes a total of 353 days in which the Discharger has been out of compliance for failure to submit the 2012 Annual Report, and is the basis for determining the recommended civil liability amount.

However, the alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit required technical reports does not result in an economic benefit that can be measured on a daily basis. The Discharger only receives an economic benefit by not submitting the required technical report, and not a per-day benefit during the entire period of violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 17 days of violation. A calculation of initial liability totals \$5,950 (0.35 per day factor X 17 adjusted days of violation X \$1,000 per day penalty).

Step 4. Adjustment Factors

a) *Culpability*: 1.2

Discussion: The Discharger was assessed a score of 1.2, which increases the liability amount. The Discharger is responsible for failing to submit the annual report alleged herein. The requirement to submit a 2012 Annual Report was detailed in the Reissued General Order. Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the Reissued General Order, the Discharger continues to fail to comply. Thus, the Discharger had knowledge of the requirement to submit the Annual Report and failed to meet the reasonable standard of care in that regard.

b) *Cleanup and Cooperation*: 1.3

Discussion: The Discharger was assessed a score of 1.3, which increases the liability amount. The Discharger was issued a Notice of Violation on 22 August 2013, which requested that the report be submitted as soon as possible to minimize liability. The Discharger was unresponsive to the NOV, and did not cooperate with the Water Board to come back into compliance.

Attachment A – ACL Complaint No. R5-2014-0543

The violation of Water Code section 13268(a), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

c) *History of Violations: 2*

Discussion: The Discharger was assessed the score of 2, which increases the fine. The Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2011-0068 on 13 October 2011 for the Discharger's failure to submit the 2009 Annual Report and the Waste Management Plan by the required deadlines, as required by the Reissued General Order and the MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2012-0070 on 2 August 2012 for the Discharger's failure to submit the 2010 Annual Report by the required deadline, as required by the Reissued General Order and the MRP. In addition, the Central Valley Water Board adopted Administrative Civil Liability Order No. R5-2013-0091 on 25 July 2013 for the Discharger's failure to submit the 2011 Annual Report by the required deadline, as required by the Reissued General Order and the MRP. The Enforcement Policy requires that a minimum multiplier of 1.1 be used when there is a history of repeat violations.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

- a) *Total Base Liability Amount: \$18,564* [Initial Liability (\$5,950) x Adjustments (1.2)(1.3)(2)].

Step 6. Ability to Pay and Continue in Business

The Enforcement Policy provides that if the Central Valley Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

- a) *Adjusted Total Base Liability Amount: \$18,564*

Discussion: The Discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the Dairy, a significant asset, and 2) the Discharger operates a dairy, an ongoing business that generates profits.

Without additional information provided by the Discharger, based on this initial assessment of information available in the public record, it appears the Discharger has the assets to pay the Total Base Liability. Based on the reasons discussed above, no reduction in liability is warranted.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount:* \$18,564 + \$0 (Staff Costs) = **\$18,564.**
- b) *Discussion:* No staff costs have been assessed as part of this enforcement action.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit:* **\$1,500**

Discussion: The Discharger has received an economic benefit from the costs saved in not drafting and preparing the 2012 Annual Report. This is based on the current consulting costs of producing an Annual Report (\$1,500). The adjusted combined total base liability amount of \$18,564 is more than at least 10% higher than the economic benefit amount (\$1,500) as required by the Enforcement Policy.

Step 9. Maximum and Minimum Liability Amounts

- a) *Minimum Liability Amount:* **\$1,650**

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the alleged violation is \$1,500.

- b) *Maximum Liability Amount:* **\$353,000**

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13367(b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (353 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2012 Annual Report is **\$18,564.**

Discharger Name/ID:		James G. & Amelia M. Sweeney/5D545155N01		ATTACHMENT B	
				Violation 1	
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)			
	Step 2	Per Gallon Factor (Generated from Button)			
		Gallons			
		Statutory / Adjusted Max per Gallon (\$)			
Non-Discharge Violations		Total			\$
		Per Day Factor (Generated from Button)			
		Days			
		Statutory Max per Day			\$
Add'l Factors	Step 3	Total			
		Per Day Factor			
		Days			
		Statutory Max per Day			\$
Initial Amount of the ACL					\$
					\$
					\$
					\$
Step 4		Culpability			\$
		Cleanup and Cooperation			\$
		History of Violations			\$
					\$
Step 5		Total Base Liability Amount			\$
		Ability to Pay & to Continue in Business			\$
		Other Factors as Justice May Require			\$
		Staff Costs*			\$
Step 6		Economic Benefit			\$
		Minimum Liability Amount			\$
		Maximum Liability Amount			\$
					\$
Step 7		1,500			\$
		\$1,650			\$
		353,000			\$
					\$
Step 8					\$
					\$
					\$
					\$
Step 9					\$
					\$
					\$
					\$
Step 10					\$
					\$
					\$
					\$

Penalty Day Range Generator

Start Date of Violation=	7/2/13	Days
End Date of Violation=	6/19/14	Days
Maximum Days Fined (Steps 2 & 3) =	353	Days
Minimum Days Fined (Steps 2 & 3) =	17	Days